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ILLINOIS COMPILED STATUTES ANNOTATED
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*** ARCHIVE MATERIAL ***

*** THIS SECTION IS CURRENT THROUGH PUBLIC ACT 93-647 ***
*** OCTOBER 15, 2003 ANNOTATION SERVICE ***

CHAPTER 705. COURTS
JUDICIARY
JUVENILE COURT ACT OF 1987
ARTICLE V. DELINQUENT MINORS
PART 4. ARREST AND CUSTODY

705 ILCS 405/5-401.5 (2004)

§ 705 ILCS 405/5-401.5. (Effective August 6, 2005) When statements by minor may be used

Sec. 5-401.5. (a) In this Section, "**custodial interrogation**" means any interrogation (i) during which a reasonable person in the subject's position would consider himself or herself to be in custody and (ii) during which a question is asked that is reasonably likely to elicit an incriminating response.

In this Section, "**electronic recording**" includes motion picture, audiotape, videotape, or digital **recording**.

In this Section, "place of detention" means a building or a police station that is a place of operation for a municipal police department or county sheriff department or other law enforcement agency at which persons are or may be held in detention in connection with criminal charges against those persons or allegations that those persons are delinquent minors.

(b) An oral, written, or sign language statement of a minor who, at the time of the commission of the offense was under the age of 17 years, made as a result of a **custodial interrogation** conducted at a police station or other place of detention on or after the effective date of this amendatory Act of the 93rd General Assembly shall be presumed to be inadmissible as evidence against the minor in any criminal proceeding or juvenile court proceeding, for an act that if committed by an adult would be brought under Section 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.2, or 9-3.3, of the Criminal Code of 1961 unless:

- (1) an **electronic recording** is made of the **custodial interrogation**; and
- (2) the **recording** is substantially accurate and not intentionally altered.

(c) Every **electronic recording** required under this Section must be preserved until such time as the minor's adjudication for any offense relating to the statement is final and all direct and habeas corpus appeals are exhausted, or the prosecution of such offenses is barred by law.

(d) If the court finds, by a preponderance of the evidence, that the minor was subjected to a **custodial interrogation** in violation of this Section, then any statements made by the minor during or following that **non-recorded custodial interrogation**, even if otherwise in compliance with this Section, are presumed to

be inadmissible in any criminal proceeding or juvenile court proceeding against the minor except for the purposes of impeachment.

(e) Nothing in this Section precludes the admission (i) of a statement made by the minor in open court in any criminal proceeding or juvenile court proceeding, before a grand jury, or at a preliminary hearing, (ii) of a statement made during a **custodial interrogation** that was not **recorded** as required by this Section because **electronic recording** was not feasible, (iii) of a voluntary statement, whether or not the result of a **custodial interrogation**, that has a bearing on the credibility of the accused as a witness, (iv) of a spontaneous statement that is not made in response to a question, (v) of a statement made after questioning that is routinely asked during the processing of the arrest of the suspect, (vi) of a statement made during a **custodial interrogation** by a suspect who requests, prior to making the statement, to respond to the interrogator's questions only if an **electronic recording** is not made of the statement, provided that an **electronic recording** is made of the statement of agreeing to respond to the interrogator's question, only if a **recording** is not made of the statement, (vii) of a statement made during a **custodial interrogation** that is conducted out-of-state, (viii) of a statement given at a time when the interrogators are unaware that a death has in fact occurred, or (ix) of any other statement that may be admissible under law. The State shall bear the burden of proving, by a preponderance of the evidence, that one of the exceptions described in this subsection (e) is applicable. Nothing in this Section precludes the admission of a statement, otherwise inadmissible under this Section, that is used only for impeachment and not as substantive evidence.

(f) The presumption of inadmissibility of a statement made by a suspect at a **custodial interrogation** at a police station or other place of detention may be overcome by a preponderance of the evidence that the statement was voluntarily given and is reliable, based on the totality of the circumstances.

(g) Any **electronic recording** of any statement made by a minor during a **custodial interrogation** that is compiled by any law enforcement agency as required by this Section for the purposes of fulfilling the requirements of this Section shall be confidential and exempt from public inspection and copying, as provided under Section 7 of the Freedom of Information Act, and the information shall not be transmitted to anyone except as needed to comply with this Section.

HISTORY: Source: P.A. 93-206, § 15; P.A. 93-517, § 15.

NOTES:

NOTE.

P.A. 93-206 and P.A. 93-517 enacted identical versions of this section.

EFFECTIVE DATE.

Section 99 of P.A. 93-206 made this section effective 2 years after becoming law. The Act was approved July 18, 2003.

Section 99 of P.A. 93-517 makes this section effective two years after becoming law. The Act was approved August 6, 2003.